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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/402,232	09/30/1999	RAINER ESKUCHEN	H-2849-PCT/U	5687

23657 7590 02/26/2002

COGNIS CORPORATION  
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GULPH MILLS, PA 19406

EXAMINER

MAIER, LEIGH C

ART UNIT	PAPER NUMBER
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1623

DATE MAILED: 02/26/2002

19

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
**09/402,232**

Applicant(s)  
**Eskuchen**

Examiner  
**L igh Maier**

Art Unit  
**1623**



-- Th MAILING DATE of this communication appears on th cover sheet with the correspondenc address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1) ☒ Responsive to communication(s) filed on Jan 3, 2002

2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

## Disposition of Claims

4) ☒ Claim(s) 25-37 is/are pending in the applica

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from considera

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 25-37 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirem

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some\* c) ☐ None of:

- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Status of the Prosecution***

Claim 25 has been amended. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action. Any objection or rejection or objection not expressly repeated has been withdrawn.

### ***Claim Rejections - 35 U.S.C. § 103***

Claims 25-33 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCURRY et al (US 4,950,743).

The amendment to claim 25 reverses the sequence of steps (e) and (f) in the original claim. The claims remain rejected as set forth in paper no. 16. However, the amendment changes the process, so that the order of addition of catalyst is now the same as in the prior art of record.

Applicant's arguments filed January 3, 2002 have been fully considered but they are not persuasive.

Applicant first presents a general argument that the examiner's basis for obviousness stems from Applicant's specification, but does not point to any specific instances of this.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so

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long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicant further states:

Since the '743 reference admittedly fails to contain any teaching or suggestion relating to the use of those claimed elements . . . i.e., the use of glucose syrup; the use of glucose syrup having the claimed solids content; etc. one of ordinary skill in the art *has no reason to be motivated to modify the teachings of this reference* in the manner asserted by the Office. [Emphasis added.]

Applicant's attention is drawn to the paragraph bridging pages 3 and 4 of the previous Office action (paper no. 16) for examiner's reasoning and motivation for modifying the teaching of reference '743.

Claims 25 and 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCURRY et al (US 4,950,743) in view of GRUTZKE (US 5,648,475), as set forth in paper no. 16.

Applicant's arguments filed January 3, 2002 have been fully considered but they are not persuasive.

Applicant contends that "... the reasons for employing the allegedly taught cascade reactors of the '475 reference, in <sup>combination</sup>~~combination~~ with the '743 reference are not found in either of

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the prior art references . . .” Applicant’s attention is drawn to col 3, lines 19-32, as cited in the previous Office action (paper no. 16), of reference ‘475.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Examiner’s hours, phone & fax numbers***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh Maier whose telephone number is (703) 308-4525. The examiner can normally be reached on Tuesday, Wednesday, or Friday 7:00 to 3:30 (ET).

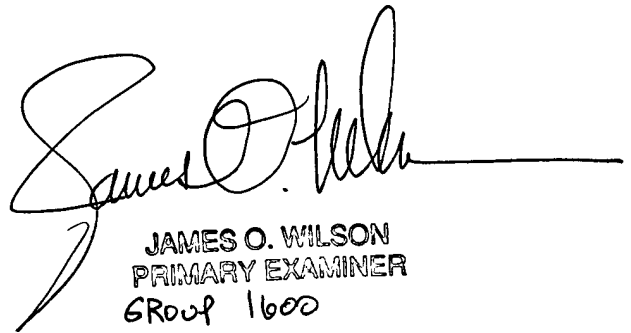
If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Mr. Gary Geist (703) 308-1701, may be contacted. The fax phone number for Group 1600, Art Unit 1623 is (703) 308-4556 or 305-3592.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 1600 receptionist whose telephone number is (703) 308-1235.

Visit the U.S. PTO's site on the World Wide Web at <http://www.uspto.gov>. This site contains lots of valuable information including the latest PTO fees, downloadable forms, basic search capabilities and much more.

Leigh C. Maier  
Patent Examiner  
February 15, 2002



JAMES O. WILSON  
PRIMARY EXAMINER  
Group 1600